

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No.: 1:19-CR-00018-ABJ

UNITED STATES OF AMERICA,

v.

ROGER J. STONE, JR.,

Defendant.

**DEFENDANT ROGER STONE'S MOTION FOR DISCOVERY
REGARDING SELECTIVE PROSECUTION**

Defendant, Roger Stone, requests that this Court issue an order compelling discovery on the issue of selective prosecution. Roger Stone is being selectively prosecuted because he has exercised his First Amendment right to associate with, and through speech, support Donald J. Trump, the President of the United States.

THE LAW ON SELECTIVE PROSECUTION

The Special Counsel's prosecutorial discretion is subject to constitutional limitations including the equal protection component of the Fifth Amendment's Due Process Clause, which prohibits prosecutorial decisions based on race, religion, or other arbitrary classifications, including the exercise of protected constitutional rights. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Wayte v. United States*, 470 U.S. 598, 608 (1985). Federal courts have long "recognized that it is unconstitutional to administer the law 'with an evil eye and an unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances'" *United States v. Napper*, 574 F. Supp. 1521, 1523 (D.D.C. 1983) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886)). To obtain discovery on a selective-

prosecution claim, a defendant must put forth “some evidence tending to show the existence of the essential elements of a selective prosecution claim.” *Armstrong*, 517 U.S. at 470 (internal citations omitted). These elements are: (1) that the defendant was singled out for prosecution from others similarly situated, and (2) that the prosecution was motivated by a discriminatory purpose. See *United States v. Palfrey*, 499 F. Supp. 2d 34, 39 (D.D.C. 2007); *United States v. Blackley*, 986 F.Supp. 616, 618 (D.D.C. 1997). To establish a claim sufficient to warrant discovery, the defendant must provide something more than mere speculation or personal conclusions based on anecdotal evidence. Rather, the standard “necessarily is lower than the ‘clear evidence’ standard required for dismissal of the indictment.” *United States v. Hsia*, 24 F. Supp. 2d 33, 49 (D.D.C. 1998) (citing *Armstrong*, 517 U.S. at 470) (*reversed in part and appeal dismissed*, 176 F.3d 517 (D.C. Cir. 1999)).

With respect to the first element, “[a] similarly situated offender is one outside the protected class who has committed roughly the same crime under roughly the same circumstances but against whom the law has not been enforced.” *United States v. Khanu*, 664 F. Supp. 2d 28, 32 (D.D.C. 2009) (internal citations omitted); see also *Armstrong*, 517 U.S. at 469. With respect to the second element: “[d]iscriminatory purpose implies more than intent as awareness of consequences. It implies that the decision maker selected or affirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” *Wayte*, 470 U.S. at 610 (internal citations omitted).

A party seeking discovery on a selective prosecution claim is not required to produce direct evidence of intent. *United States v. Washington*, 705 F.2d 489, 494-95 (D.C. Cir. 1983) (recognizing that the district court ordered discovery on discriminatory intent based on indirect evidence of statistics regarding “how many passport frauds were detected since 1975, how many

detected frauds were prosecuted and how many frauds detected or prosecuted involved [a particular group]” and was thus uniquely in the government’s possession); *see also Branch Ministries, Inc. v. Richardson*, 970 F. Supp. 11, 17 (D.D.C. 1997) (noting that indirect evidence of bias or discriminatory motive may be sufficient in civil case alleging selective prosecution by Internal Revenue Service applying the same test for selective prosecution as that used in criminal cases, and noting that application of civil, as opposed to criminal discovery rules did not affect the outcome of the case). “If discovery is ordered, the Government must assemble from its own files documents which might corroborate or refute the defendant’s claim” of selective prosecution. *Armstrong*, 517 U.S. at 468. This may include information demonstrating how many instances of the crime were detected, how many were prosecuted, and how many involved individuals or entities of the defendant’s nationality. *Washington*, 705 F.2d at 494-95. In the context of an investigation when the Special Counsel was tasked with determining if any American conspired with any Russian agent to influence the 2016 presidential election, and a determination was made that there was none, Roger Stone can meet the threshold and is entitled to discovery.

ROGER STONE IS BEING SELECTIVELY PROSECUTED

The reason for the Special Counsel’s targeted investigation and prosecution of Roger Stone is obvious: Roger Stone is being punished for supporting and maintaining political support for President Donald Trump. The appointment of the Special Counsel was limited to “the Russian government’s efforts to interfere in the 2016 presidential election,” and “links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.”¹ Going to great lengths to exclude Americans from actions involving

¹ Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters. (Attached as Exhibit 1).

Russians, the Special Counsel indicted only Russians who will never appear in a U.S. courtroom. *See United States v. Netyksho et. al.* No. 18-cr-215 (ABJ). Indeed, the only Americans who were indicted by the Special Counsel were those who allegedly committed crimes for activities outside the Russian collusion investigation, and those who allegedly lied to the Special Counsel, or, allegedly, to Congress. The only conclusion that can be drawn is that Roger Stone is being prosecuted for obstructing a different branch of government's investigation into a conspiracy the Special Counsel has announced did not exist.

The Appointment Order for the Special Counsel is dated May 17, 2017. As set forth below, much of the public reporting regarding efforts by foreign nationals to interfere with the 2016 election came to light in late 2016 and early 2017. Nevertheless, the Special Counsel was limited to focus solely on activities by Russians in support of President Trump, despite existing reports regarding other efforts to interfere on behalf of multiple presidential candidates including Donald Trump, Hillary Clinton, and Bernie Sanders. Furthermore, despite plenty of evidence that other witnesses have testified and lied in front of Congress, the Special Counsel has prosecuted Roger Stone, and without a referral to do so.

Congress did not refer a potential criminal matter to the Department of Justice. It is a separate, but not mutually exclusive claim, that the Special Counsel was not authorized to accept such a referral. Lying to or obstructing Congress would not fall within the "any links" paragraph (b)(i) of the Appointment Order vesting power in the Special Counsel. Stone's alleged crime was a snapshot in time. Indeed, any obstruction or lying to Congress charge committed by Stone would be well after the 2016 presidential campaign, and no time before.

Section 600.4 only authorizes the Special Counsel to the jurisdiction established by the Attorney General – the Order of Appointment of Special Counsel. The Special Counsel is limited

by the “specific factual statement of the matter to be investigated.” Order No. 3915-2017. “The jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted.” *Id.* (Emphasis added). This Court has held that the Special Counsel’s authority is not limited by the federal regulation or the Order of Appointment, it nonetheless, demonstrates the Special Counsel endeavored well outside its authority and remarkably outside its branch of government to prosecute matters that Congress did not ask the Department to do, for crimes that did not, “interfere with, the Special Counsel’s investigation.”

Lying to or obstructing Congress is not “any links” in paragraph (b)(i) of the Appointment Order. This would not be any links and/or coordination. Any obstruction by Stone of Congress would be well after the 2016 presidential campaign, and no time before. What makes this prosecution particularly selective is that the Special Counsel had to act without a referral from Congress and act outside the limits of his appointment – prosecute obstruction of another branch of government. Said plainly, the Special Counsel was not asked to look into obstruction of Congress and the Special Counsel was not authorized to investigate it on its own.²

Jerome Corsi, a witness in the case against Stone, who admits to lying to the Special Counsel, published for the world to see, a draft of a Plea Agreement pushed on him by the

² See Morning Joe, *Adam Schiff Discusses What House Intel Committee Learned from Roger Stone*, YouTube (Sept. 27, 2017), <https://www.youtube.com/watch?v=1y62cb8SyD0&feature=youtu.be&t=49>
Congressman Eric Swalwell, *Rep. Swalwell on MSNBC discussing House Intelligence Committee's [sic] Interview of Roger Stone*, YouTube (Sept. 26, 2017) <https://www.youtube.com/watch?v=6lUEGgLfux0>
Congressman Eric Swalwell, *Rep. Swalwell on CNN discussing House Intelligence Committee's interview of Roger Stone*, YouTube (Sept. 26, 2017), <https://www.youtube.com/watch?v=TfOMMniTC0s>
Adam Schiff, *Rep. Schiff Discusses Russian Ads on Facebook and Roger Stone's Interview on CNN*, YouTube (Sept. 27, 2017), <https://www.youtube.com/watch?v=KvFkuM-lnr0>
Jackie Speier, *Rep. Speier talks to CNN about Roger Stone's House Intelligence Interview*, YouTube (Sept. 26, 2017), https://www.youtube.com/watch?v=r3rCyq_D5Z4

Special Counsel, authorized his lawyer to sue the Special Counsel, and yet he was not charged. (Exhibits 2, 3, 4) (filed under seal).

In *Armstrong*, the Supreme Court ruled that a defendant's evidence of discriminatory effect was insufficient to support a selective prosecution claim where it did not identify similarly situated offenders—individuals of a different race who could have been prosecuted but were not. 517 U.S. at 470. Here, the Mueller report has the information Stone seeks. The Report advises who has been interviewed, who has been investigated, and why others were not prosecuted for obstruction or perjury. Indeed, they are “outside the protected class [and have] committed roughly the same crime under roughly the same circumstances but against whom the law has not been enforced.” *Khanu*, 664 F. Supp. 2d at 32 (internal quotation marks omitted). Further discovery will make clear that others were given preferred treatment, *i.e.* not indicted, because they did not support Trump.

Another witness, Randy Credico lied about speaking to Assange and Assange's lawyer to federal agents. It is curious that the Special Counsel found one aspect of Credico's interactions with Stone so compelling that it made its way into Stone's Indictment. In Paragraph 14(e) of the Indictment, the Special Counsel quotes the conversation between Stone and Credico from Credico's radio show of August 23, 2016. Stone and Credico have a discussion regarding communications with the “head of Organization 1.” Yet, astonishingly, in Credico's testimony to the Grand Jury (DOJ-3500-RC-000111) Transcript Page 44, Lines 7-22, Credico tells the Grand Jury that on the very show they quote, Stone and Credico never discussed the head of Organization 1. For unknown reasons and the precise reason why discovery is mandated in these situations, the Special Counsel elected not to charge Credico with lying to the Grand Jury, something expressly within their regulatory authority.

Later in his testimony, Credico says that prior to his interview with presidential candidate Gary Johnson on September 10, 2016, that he had never spoken to Stone about WikiLeaks or Assange.³ This is a demonstrated lie as according to the text messages between Stone and Credico that Stone voluntarily released, and the Special Counsel possessed. As early as August 19, 2016, Credico was bragging to Stone that he had a connection to Assange and that it was through Margaret Kunstler, Esq., an attorney represented to be on Julian Assange's legal team. There is no indication based on the initial review of discovery provided by the government that the Grand Jury was ever informed of Credico's lies regarding the August 23d radio interview.

In another example of the selective nature of the Stone prosecution, upon information and belief, an additional witness appeared to provide testimony to the Grand Jury about Stone and Credico. During that testimony the witness informed the Grand Jury that Randy Credico threatened to "put a hole" in [the witness's] head if the witness told investigators that Credico was in fact the person that provided Roger back-channel information on WikiLeaks.⁴

This is an instance where the very person Stone is accused of intimidating is actually intimidating other witnesses in the case. The Special Counsel made a decision not to charge Credico with either lying or intimidation, something which makes him similarly situated to Stone and discovery is required to make clear that out of the two individuals, only Roger Stone supported President Donald Trump.

Of the hundreds of other witnesses in the House Permanent Select Committee on Intelligence investigation and the other committees of the House and the Senate, only two have been charged; arguably two of the closest people to the President, Michael Cohen and Roger Stone. Michael Cohen was charged with lies that directly related to the Trump Organization and

³ Credico, Grand Jury at 55-57. (filed under seal).

⁴ <https://dailycaller.com/2018/11/07/stone-mueller-grand-jury-credico/>

its potential involvement with real estate transactions in Russia. Contrast that with the allegations leveled against Roger Stone, that he allegedly lied to a co-equal and distinct branch of government, without a referral being made by that Constitutionally distinct branch, about having conversations with an American friend who was a journalist. There is enough evidence of the selective nature of how the Special Counsel choose people to indict that discovery should be ordered.

Respectfully submitted,

By: /s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2019, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record or pro se parties, via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Robert Buschel
Robert C. Buschel

*United States Attorney's Office for the
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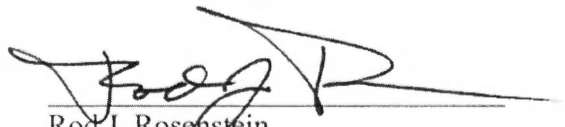
ORDER NO. 3915-2017

APPOINTMENT OF SPECIAL COUNSEL
TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE
2016 PRESIDENTIAL ELECTION AND RELATED MATTERS

By virtue of the authority vested in me as Acting Attorney General, including 28 U.S.C. §§ 509, 510, and 515, in order to discharge my responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election, I hereby order as follows:

- (a) Robert S. Mueller III is appointed to serve as Special Counsel for the United States Department of Justice.
- (b) The Special Counsel is authorized to conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including:
 - (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and
 - (ii) any matters that arose or may arise directly from the investigation; and
 - (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).
- (c) If the Special Counsel believes it is necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.
- (d) Sections 600.4 through 600.10 of Title 28 of the Code of Federal Regulations are applicable to the Special Counsel.

5/17/17
Date


Rod J. Rosenstein
Acting Attorney General

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	Criminal No.
	:	
v.	:	
	:	Violation:
JEROME CORSI,	:	18 U.S.C. § 1001(a)(2) (False Statements)
	:	
Defendant.	:	

INFORMATION

The Special Counsel informs the Court:

COUNT ONE

(False Statements)

On September 10, 2018, defendant JEROME CORSI did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the defendant falsely stated and represented to the Special Counsel's Office, including Special Agents of the Federal Bureau of Investigation, in Washington, D.C., that he denied an associate's request to get in touch with an organization that he understood to be in possession of stolen emails and other documents pertaining to the 2016 U.S. presidential election, that the associate never asked him to have another person try to get in touch with the organization, and that he did not provide the associate with any information about what materials the organization possessed or what it might do with those materials.

(Title 18, United States Code, Section 1001(a)(2).)

ROBERT S. MUELLER, III
Special Counsel

By:

Jeannie S. Rhee
Andrew D. Goldstein
Aaron S.J. Zelinsky
L. Rush Atkinson
The Special Counsel's Office

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JEROME CORSI,

Defendant.

Criminal No.:

Violation: 18 U.S.C. § 1001(a)(2) (False
Statements)

STATEMENT OF THE OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America and the defendant, JEROME CORSI, stipulate and agree that the following facts are true and accurate. These facts do not constitute all of the facts known to the parties concerning the charged offense; they are being submitted to demonstrate that sufficient facts exist that the defendant committed the offense to which he is pleading guilty.

1. On or about September 6, 2018, the defendant, JEROME CORSI, was interviewed voluntarily by the Special Counsel's Office, including Department of Justice prosecutors and Special Agents of the Federal Bureau of Investigation. At the time of the interview, the Special Counsel's Office was investigating the Russian government's efforts to interfere in the 2016 presidential election, including:

- a. the theft of campaign-related emails and other documents by the Russian government's Main Intelligence Directorate of the General Staff ("GRU");
- b. the GRU's provision of certain of those documents to an organization ("Organization 1") for public release in order to expand the GRU's interference in the 2016 U.S. presidential election campaign; and

- c. the nature of any connections between individuals associated with the U.S. presidential campaign of Donald J. Trump (“Trump Campaign”) and the Russian government or Organization 1.

2. CORSI was represented by counsel during the September 6, 2018 interview. At the outset of the interview, CORSI was warned that intentionally making false statements to the investigators was a violation of federal law. CORSI said that he understood.

3. During the interview, CORSI said that in the summer of 2016 an associate (“Person 1”) who CORSI understood to be in regular contact with senior members of the Trump Campaign, including with then-candidate Donald J. Trump, asked CORSI to get in touch with Organization 1 about materials it possessed relevant to the presidential campaign that had not already been released. CORSI thereafter knowingly and intentionally made the following materially false statements during the interview:

- a. CORSI said he declined the request from Person 1 and made clear to Person 1 that trying to contact Organization 1 could be subject to investigation. CORSI also stated that Person 1 never asked CORSI to have another person try to get in contact with Organization 1, and that CORSI told Person 1 that they should just wait until Organization 1 released any materials.
- b. CORSI further stated that after that initial request from Person 1, CORSI did not know what Person 1 did with respect to Organization 1, and he never provided Person 1 with any information regarding Organization 1, including what materials Organization 1 possessed or what Organization 1 might do with those materials.

4. In truth and in fact, and as CORSI well knew, after Person 1 asked CORSI to get in touch with Organization 1, CORSI did not decline the request as he stated in the interview. Instead, CORSI contacted an individual who resided in London, England (“overseas individual”) to pass on Person 1’s request to learn about materials in Organization 1’s possession that could be relevant to the presidential campaign. Corsi thereafter told Person 1 that Organization 1 possessed information that would be damaging to then-candidate Hillary Clinton and that Organization 1 planned to release damaging information in October 2016.

- a. On or about July 25, 2016, Person 1 sent an email to CORSI with the subject line, “Get to [the founder of Organization 1].” The body of the message read: “Get to [the founder of Organization 1] [a]t Ecuadorian Embassy in London and get the pending [Organization 1] emails . . . they deal with Foundation, allegedly.” On or about the same day, CORSI forwarded Person 1’s email to the overseas individual.
- b. On or about July 31, 2016, Person 1 emailed CORSI with the subject line, “Call me MON.” The body of the email read in part that the overseas individual “should see [the founder of Organization 1].”
- c. On or about August 2, 2016, CORSI responded to Person 1 by email. CORSI wrote that he was currently in Europe and planned to return in mid-August. CORSI stated: “Word is friend in embassy plans 2 more dumps. One shortly after I’m back. 2nd in Oct. Impact planned to be very damaging.... Time to let more than [the Clinton Campaign chairman] to be exposed as in bed w enemy if they are not ready to drop HRC [Hillary Rodham Clinton]. That appears to be the game hackers

are now about. Would not hurt to start suggesting HRC old, memory bad, has stroke -- neither he nor she well. I expect that much of next dump focus, setting stage for Foundation debacle.”

5. Between approximately January 13, 2017 and March 1, 2017, CORSI deleted from his computer all email correspondence that predated October 11, 2016, including Person 1’s email instructing CORSI to “get to [the founder of Organization 1]” and CORSI’s subsequent forwarding of that email to the overseas individual.

6. After the U.S. House of Representatives Permanent Select Committee on Intelligence (“HPSCI”), the U.S. Senate Select Committee on Intelligence (“SSCI”), and the Federal Bureau of Investigation (“FBI”) began inquiring in 2017 about Person 1’s connections with Organization 1, CORSI communicated with Person 1 about developments in those investigations. For example, on or about November 28, 2017, after Person 1 had identified to HPSCI a certain individual (“Person 2”) as his “source” or “intermediary” to Organization 1, Person 2 received a subpoena compelling his testimony before HPSCI, and Person 1 learned of the subpoena. On or about November 30, 2017, Person 1 asked CORSI to write publicly about Person 2. CORSI responded: “Are you sure you want to make something out of this now? Why not wait to see what [Person 2] does? You may be defending yourself too much – raising new questions that will fuel new inquiries. This may be a time to say less, not more.” Person 1 responded by telling CORSI that the other individual “will take the 5th—but let’s hold a day.”

7. Following his September 10, 2018 interview, CORSI met with the Special Counsel’s Office for several additional interviews and voluntarily provided access to his email accounts and electronic devices. CORSI made numerous claims during these interviews, including

that his representations to Person 1, beginning in August 2016, that he had a way of obtaining confidential information from Organization 1, were false.

ROBERT S. MUELLER, III
Special Counsel

By:

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Aaron S.J. Zelinsky
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The Special Counsel's Office

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding this offense. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crime charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

I have read every word of this Statement of the Offense, or have had it read to me. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorney, I agree and stipulate to this Statement of the Offense, and declare under penalty of perjury that it is true and correct.

Date: _____

Jerome Corsi
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense, and have reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Statement of the Offense as true and accurate.

Date: _____

David E. Gray, Esq.
Attorney for Defendant